IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/04/2003

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

L.P.A.No.80 of 1998
and Cross Objection
and
C.M.P.Nos.10403 & 11741 of 1998 & 1434 of 2003

1. C.S.Robert

2. A.S.Arokiaraj
Trustees and representatives of Catholic
public of Vakampatti. ... Appellants.

-Vs-

1. M.Kanagappan

2. Parish Priest of
St.Sacred Heart Church,
N.Panchampatti,
Dindigul taluk.

3. Parish Priest of
St.Joseph Church,
Main Road, Dindigul.

4. The Arch Bishop of
Trichy Diocese,
Melapudur,
Trichy Town.

5. M.John Stephen.

6. A.Vimala

7. Jeevamani

8. Jayaseelan
9. P.Xavier

... Respondents.

L.P.A. filed against the judgment and decree dated 15.7.1998
in A.S.No.1174 of 1994 of this Court reversing the judgment and decree dated
31.8.1994 in O.S.No.396 of 1993 on the file of Addl. Sub Judge, Dindigul.

!For appellants :: Mr.T.R.Mani, Sr.counsel
for Mr.K.Srinivasan.

^For respondents :: Mr.P.Peppin Fernando for R1 to R4.
Mr.D.Saravanan for R5 to R9.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

The question regarding administration of a church, to be precise, a Catholic Church, by name, St.Mary Magdalin Church situate in a village called, Vakkampatti in Dindigul taluk is the subject matter of the appeal. There is no dispute regarding the exercise of spiritual power of the church by Papacy through its local representatives, the Episcopate and the local Parish Priest as the plaintiffs have conceded that the spiritual power should be exercised by the Parish Priest of the Church. The question is only with reference to the temporal or administrative power over the Church and the exercise of the said administrative power.

2. The plaintiffs, who are the appellants in the Letters Patent Appeal, have instituted the suit for declaration that the suit Church and the suit properties belong to the entire Catholic public of Vakkampatti village with consequential injunction restraining the defendants 2 to 4 from interfering with the management and administration of the suit Church and its properties by the plaintiffs as trustees and for removal of the first defendant from trusteeship and for directing the first defendant to deliver the management of the Church and its properties to the plaintiffs and also for certain other reliefs. The suit was instituted by the plaintiffs as trustees of the church and as representatives of the Catholic Public of Vakkampatti village. Though a point was raised whether the suit is maintainable without obtaining the leave under section 92 of the Code of Civil Procedure, we find that necessary prior permission to institute the suit has been obtained by the plaintiffs in the trial Court itself before the institution of the suit.

3. The case of the plaintiffs is that the suit Church was constructed in a Village Natham more than 200 years prior to the institution of the suit by the Catholic public of Vakkampatti by collecting donations and taxes from the public and by contributing their physical labour and on this fact, there is no dispute between the parties. It is pleaded that the Church was constructed by the entire Catholic public under the supervision of Nattanmais and Periyathanams of the said village. It is stated in the plaint that for the proper administration of the church and its properties, a Committee of five members headed by the Nattanmai, C.Savarimuthu, father of the first plaintiff was formed 90 years prior to the institution of the suit. It is also stated that though a Parish Priest was there, he never exercised any right, ownership or control over the Church at any point of time. It is further stated that for the administration and management of the church and

its properties, out of the five members of the Committee, three were appointed by public and the office of trusteeship has been made hereditary. (However, the plaint does not disclose how those three persons elected by the public can hold the office hereditarily. The plaint does not also disclose how the other two members were appointed. The evidence of P.W.1 also does not disclose anything about the mode of appointment of other two members of the Committee). It is the case of the plaintiffs that during the long and continuous usage of the institution, the management vested in the trustees of the Committee and the period of management of the Managing Trustee is stated to be one year and the change in management of the Managing Trustee was coincident to the Church festival held in the month of June, every year. It is stated that at the end of the Festival, the amount collected for the festival would be shown to the public in a General Body Meeting and accounts would be approved and the balance amount would be shared by the trustees. It is stated that the two plaintiffs and the first defendant are the three trustees and they are in management of the Church and its properties. It is their case that the first plaintiff has spent a sum of Rs.40,000/- for the construction of a portion of the Church and he has to get reimbursement of the said sum and the first defendant also agreed for the same. According to the plaintiffs, the first defendant who is one of the trustees, is not maintaining a true and correct account of the income and expenditure of the Church and its properties and he is misappropriating the income from the Church and its properties. The case of the plaintiffs is that the first defendant has been making arrangements to transfer the Church and its properties to the Arch Bishop of Trichy Diocese, the fourth defendant in the suit. It is stated that the fourth defendant is superior to the defendants 2 and 3 and the defendants 2 and 3 have been, in the ordinary course, acting on the instructions of the fourth defendant. It is stated that the first defendant has no right to execute any document transferring the right or title of the Church and its properties to anybody as they belong to the entire Catholic public of Vakkampatti village, nor he has the power or authority to make any encumbrance over the properties without the consent and permission of other trustees and the Catholic public of Vakkampatti village. It is stated that the management has been throughout with the trustees by inheritance and by rotation among themselves. It is stated that the defendants 2 to 4 have no right to conduct the festival of the Church. Hence, the plaintiffs, as trustees of the Church as well as representatives of the Catholic public of Vakkampatti village, have filed the suit for necessary declaration and injunction as set out earlier.

4. The first defendant has filed a written statement denying all the averments and the case of the first defendant is that the plaintiffs are not the trustees and after the consecration of the Church by the Arch Bishop of Trichy Diocese in the year 1902, the Church, its properties and the management of the Church were left to the control of the Bishop and the first defendant has been in the management of the Church only as a Manager and the plaintiffs has only acted as his Secretaries sometimes. According to the first defendant, he was only the manager of the Church and its properties and no trustees have been appointed. It is his specific case that the control, management and maintenance of the Church have been under the control of the defendants 2 to 4. It is stated that the festival would be conducted under the control of the Bishop in the month of July every year and the plaintiffs are not trustees. It is the case of the defendants that the property

described as item No.2 in A-schedule belonged to the first defendant and he sold the same to the fourth defendant and it is not a property of the Church. It is stated that the plaintiffs have no right over the properties. His case is that he is only in management of the Church and the defendants 2 and 3 are having the legal rights to manage the Church and to perform the festivals. It is stated that the plaintiffs are not entitled to any decree directing the first defendant to hand over the management of the Church and its properties and call for its accounts. He also denied that the plaintiffs are entitled to other reliefs.

5. The second defendant has filed a separate written statement stating that the Church was consecrated and dedicated to worship of the general public. It is his case that the ancestors of the first defendant were allowed to manage the affairs of the Church by the Church authorities. It is stated that the representatives of the Arch Bishop of Trichy Diocese used to perform the religious part of the festivals and ceremonies and holy masses. It is stated that the festivals were celebrated with the moneys collected from the public and if any surplus money was available, that would be credited to the second defendant and the surplus money was never shared by anybody. It is his case that the entire Catholic community people of Vakkampatti village admit and acknowledge the rights of the defendants 2 to 4 over the Church. It is stated that the second defendant is in management and control of the Church. According to the second defendant, the religious part of the festival must be performed only by an ordained Priest and the suit Church belongs to the defendants 2 to 4 and the people of Vakkampatti are entitled to the right of worship.

6. It is, on the above pleadings necessary issues were framed and evidence has been let in, and the trial Court decreed the suit as prayed for. An appeal was preferred against the judgment and decree of the trial Court. A learned Single Judge of this Court, by an elaborate judgment, held that the first defendant was carrying on the secular administration of the Church as Manager, assisted by the plaintiffs, who are called, Nattanmaidars and the plaintiffs have no right in the secular administration either as Kariasthars or Nattanmaidars and hence, the plaintiffs are not entitled to the declaration that the suit Church and its properties belong to the entire Catholic public of Vakkampatty village. Learned Single Judge also considered other matters and held that the plaintiffs are not entitled to other reliefs, and allowed the appeal preferred by the defendants. It is against the judgment and decree of the learned Single Judge, the present appeal has been preferred.

7. There is no dispute and it is seen from the evidence of P.Ws.1 and 2 that the suit church was constructed 200 years ago with the funds raised from the public and some additional construction has also been made by getting contributions not only from the Catholic public of the village, but also from the Hindus and one Chinnasami Nadar had donated stones and borne the expenditure for laying the stones in the church premises. It is also not in dispute that the church is situate in Government Poramboke land. The first defendant, in his evidence, has also admitted that the church was constructed by collecting donations from the general public of the village and there is no difficulty in holding that the church has been constructed in Government Poramboke land with the funds raised from the general public and mostly from the catholics belonging to the village.

8. The appellants filed C.M.P.No.1434 of 2003 to receive the document, namely, copy of the order of the Bishop of Trichy showing that the church was consecrated in the year 1902 itself. There are no serious objections to receive the document, and by taking the document on file, no new point is sought to be introduced, but, on the other hand, the document is taken on file in proof of an already existing fact. The petition in C.M.P.No.1434 of 2003 is ordered and the document is marked as Ex.B-16 on the defendants' side. The additional document filed by the defendants in this appeal, Ex.B-16 also shows that the church was consecrated by the Arch Bishop of Trichy Diocese on 4 .3.1902 and the Parish Priest signed the declaration and as such, it is a consecrated church.

9. We have already noted that in so far as ecclesiastical jurisdiction or religious functions and ceremonies to be performed in the church in question are concerned, there is no dispute that they are looked after by the Parish Priest who is under the control and supervision of the Arch Bishop of Trichy Diocese. The first plaintiff in his evidence as P.W.1 admitted that in so far as ecclesiastical jurisdiction of the church is concerned, it is vested with the defendants 2 and 3, and in view of his own categorical admission, the plaintiffs have no right to have a declaration regarding the ecclesiastical or religious functions of the church.

10. As far as secular administration of the church is concerned, it is necessary to notice the relevant provisions of the Canon Law. Can.1214 defines the term, 'church' to mean a sacred building intended for divine worship, to which the faithful have right of access for the exercise, especially the public exercise, of divine worship. Can.1215 provides that no church is to be built without the express and written consent of the diocesan Bishop and before granting the permission, the diocesan Bishop is required to consult the council of priests and the rectors of neighbouring churches and then, he is to decide that the new church can serve the good of souls and that necessary means will be available to build the church and to provide for divine worship. Can.1217 provides that as soon as possible after completion of the building the new church is to be dedicated or at least blessed following the laws of the sacred liturgy and churches, especially cathedrals and parish churches are to be dedicated by a solemn rite. Can.1218 provides that each church is to have its own title and once the church has been dedicated this title cannot be changed. Can.12 1 9 provides that all acts of divine worship may be carried on in a church which has been lawfully dedicated or blessed, without prejudice to parochial rights.

11. The Supreme Court in MOST REV. P.M.A. METROPOLITAN v. MORAN MAR MARTHOMA (1995 Supp. (4) SCC 286) held as under:-

" A church is formed by the voluntary association of individuals. And the churches in the commonwealth are voluntary body organised on a consensual basis - their rights apart from statutes will be protected by the courts and their discipline enforced exactly as in the case of any other voluntary body whose existence is legally recognised. Therefore, all religious bodies are regarded by courts of law in the same position in respect of the protection of their rights and the sanction given to their respective organisations."

The Supreme Court held that the canons are principles of scriptural bases for the religious practice to be observed in a church.

12. We have gone through the Canon Law and also the

Commentaries on the Canon Law. Can.1214 makes it clear that the faithful have the right of access to the church for divine worship. The submission of Mr.T.R. Mani, learned senior counsel is that the administrative control of the church remains with the Roman Catholic public of Vakkampatti village and we are of the view that the effect of accepting the said submission would be that there will be a possibility of dual authority in the administration of the church one on the religious matters and another on administrative matters and the vesting of dual authority in a Roman Catholic Church would be contrary to the Canon Law. Further, we have seen the effect of consecration. A sacred building would not become fit for worship immediately after its construction and only after the sacred building is dedicated or blessed following the laws of the sacred liturgy, it would become fit for divine worship. If the dual authority is recognised, then a situation may arise that the church and its properties may be put to use by the person who constructed the church, not for the objects intended to be carried on in the church. It may also lead to a situation that there may be transfer of property to third parties thereby endangering the very existence of the church itself. Can.1222 provides that if the church cannot be used for divine worship and there is no possibility of its being restored, the diocesan Bishop may allow it to be used for some secular, but not unbecoming purpose.

13. A reading of various provisions of the Canon Law postulates that a detailed procedure has been made for the administration of the church and its properties and so long as the church retains the status of a Roman Catholic church, in our view, the diocesan Bishop alone would have the right in both the spiritual and the temporal matters in respect of the church and its properties. The church in question, by its very nature, has been constructed only from the donations made mostly by the members following Christian religion and from the fact of contribution for the construction of the church by the public, it does not mean that the properties should be transferred to the public or held by the public. When a building is constructed for the purpose of divine worship, it would become a church only after the fulfilment of certain formalities prescribed in the Canon Law and there must be an express and written consent of the diocesan Bishop and there must be dedication or blessing following the law of sacred liturgy. Once a sacred building becomes a church under the Canon Law, the faithful will have a right of access for divine worship. The Canon Law contemplates the complete existence of a church.

14. The submission of Mr.T.R.Mani, learned senior counsel for the appellants is that the above canons do not touch the matters relating to the administrative control. Learned senior counsel referred to can.1254 which says that a catholic church has the inherent right, independently of any secular power, to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives. Learned senior counsel also referred to can.1257 which provides that all temporal goods belonging to the universal church, to the Apostolic See or to other public juridical persons in the church, are ecclesiastical goods and are regulated by the canons which follow, as well as by their own statutes. He referred to sub-clause (2) of can.1257 and submitted that the sub-clause provides that unless it is otherwise expressly provided, temporal goods belonging to a private juridical person are regulated by its own statutes, not by these canons, and therefore since the church has the goods belonging to private juridical persons, namely, the

public of Vakkampatti village, the Canon Law cannot prevail.
15. Chapter II of Title VI of the Canon Law deals with juridical persons and can.116 provides that public juridical persons are aggregates of persons or of things which are established by the competent ecclesiastical authority so that, within the limits allotted to them in the name of the church, and in accordance with the provisions of law, they might fulfil the specific task entrusted to them for the public good and other juridical persons are private. Sub-clause (2) of can.116 provides that public juridical persons are given this personality either by the law itself or by a special decree of the competent authority expressly granting it and the private juridical persons are given this personality only by a special decree of the competent authority expressly granting it. In other words, private juridical persons are given the juridical personality not by law, but only by a special decree of the competent authority expressly granting it. Subclause (3) of Can.114 provides that the competent ecclesiastical authority is not to confer juridical personality except on those aggregates of persons or of things which aim at a genuinely useful purpose and which, all things considered, have the means which are foreseen to be sufficient to achieve the purpose in view. Therefore, the submission of the learned senior counsel, Mr.T.R.Mani that with regard to the temporal goods belonging to private juridical persons, the Canon Law cannot prevail is not acceptable, as the expression, 'private juridical person' in Canon Law has a significant meaning and to regard a group of persons as private juridical persons, the juridical personality should be given that status by a special decree of the competent authority expressly granting it. Learned senior counsel also referred to other provisions of the Canon Law.
16. Before considering the effect of the Canon Law, it is necessary to refer to the decision of the Supreme Court in MOST REV. P.M.A. METROPOLITAN v. MORAN MAR MARTHOMA (1995 Supp. (4) S.C.C. 286) wherein the Supreme Court explained the Canon law. After considering the Black's Law Dictionary and the Encyclopaedia of Religion, it held as under:-
" Canon is explained in Black's Law Dictionary as under:
'A law, rule or ordinance in general, and of the church in particular. An ecclesiastical law or statute. A rule of doctrine or discipline. A criterion or standard of judgment. A body of principles, standards, rules, or norms'.
Canon means both a norm and attribute of the scripture. The term ' canon law' is explained in the Encyclopaedia of Religion, Vol.3, as under:
'The term canon is based on the Greek word Kanon. Originally signifying a straight rod or bar, especially one used to keep something else straight, canon came to mean something that is fixed, a rule or norm. The term has several applications in church usage: the canon of scripture, or that fixed list of books that are determined to belong a sacred scripture; the canon of the Mass, the fixed portion of the eucharistic prayer; the process of declaring a deceased person to be among the fixed list of saints in heaven, or canonisation. From the third century, directives for church living and norms for church structures and procedures have been issued as canons.
Canon law refers to the law internal to the church. In the early centuries of Christianity, canon was used for internal church norms, to distinguish them from the imperial nomos (leges in Latin) or laws. Church norms have also been known as sacred or divine, to distinguish them from civil

or human laws. At times they are referred to as the 'sacred canons' or the 'canonical order'. The term ecclesiastical law is used synonymously with canon law, although at times ecclesiastical law also refers to the civil law adopted in various nations to regulate church affairs. The term canon law is used in the Roman Catholic, Anglican, and Orthodox communions.
Canon law is drawn from sources in scripture, custom, and various decisions of church bodies and individual church authorities. Over the centuries these have been gathered in a variety of collections that serve as the law books for various churches.'
55. Canons are thus the principal scriptural bases for the religious practices observed in a Church."
17. The Supreme Court in the same case considered the well-marked distinction between the episcopal church and congregational church and held as under:-
"A Church is either episcopal or congregational. It cannot be episcopal in spiritual matters and congregational in temporal matters. That would be against the basic characteristic of such a Church. It would be against specific provisions in the Constitution. The temporal matters or administration of churches flows from its establishment for religious purposes, namely, 'the cure of souls'. Where a building is consecrated as a Church, 'it continues to exist in the eye of law as a church and the body corporate which had been endowed in respect of it remains in possession of the endowment even though the material building is destroyed'. Every Parish Church of Malankara acknowledges the Patriarch of Antioch as the spiritual head. They have been paying Ressissa to Patriarch. The ordination, consecration and every spiritual or temporal power has always been exercised by the Patriarch of Antioch so long it was not decided on basis of the Synod held at Mulunthuruthy that the Patriarch was only the spiritual head and the temporary powers vested in the Metropolitan. This division of power could not destroy the basic characteristic of episcopacy. The Church in England is also an episcopal church. In Halsbury's Laws of England, vol.14, para 562, the right of parishioners has been described 'to enter the church, remain there for purpose of participating in divine worship to have a seat and to obey the reasonable directions of the church to ordain'. The property vests in the endowment. That is the fundamental difference in congregational and episcopal. In the former it vests in the parishioner. But in the latter in endowment. Once it is conceded that the Syrian Churches are episcopal in

character then the distinction between spiritual and temporary is of no consequence. Therefore, the property of the Church vests in the endowment and not the parishioners."

18. A Division Bench of this Court consisting of Mr.Sadasiva Ayyar and Mr.Napier, JJ., as early as in the year 1915, in MICHAEL PILLAI v. RT.REV. BARTLE (39 ILR (Mad.)1056) held as under:-
"According to Canon Law a Roman Catholic Church becomes, as soon as it is consecrated, the property of the church authorities, irrespective of the fact that any particular worshipper or worshippers contributed to its construction. (underline supplied)
The Bishop and other church authorities have the exclusive

right to the internal management of the church, whether relating to secular or religious matters, such as accommodating the congregation inside the church and prescribing the part to be taken by the congregation in the services and the ceremonies."

Though the above case dealt with the question of custom prevailing among the Roman Catholic people, this Court held that where a certain section of Roman Catholic converts of a place claimed an exclusive right to sit in and worship in a particular portion of the church during time of the service and to take part in certain duties connected with the church services, such a claim was held to be legally unsustainable. It was held that as soon as a Church is consecrated, the church becomes the property of the Bishop and other church authorities irrespective of the fact that any particular worshipper or worshippers contributed to the construction of the church.

19. Another Division Bench of this Court consisting of Mr.Ayling and Mr.Coutts Trotter,JJ., in GASPARI LOUIS v. GONSALVES (35 MLJ 407) held that if a person voluntarily joins in a particular association, the person would be bound by the rules which have been framed for the internal discipline and for the management of its affairs. The Court held as under:-

"We may say at once that we think any analogies drawn from the decisions relating to the property of the English Established Church are not really applicable to the present case. The Church of England is properly described as 'established' just because of this unique feature about it, that it is subjected to the ordinary courts of law not only as to matters temporal but even as to matters of doctrine. This is due to a variety of historical causes which need not now be examined. The Roman Catholic Church is not an Established Church. It is what is described as a voluntary association in the English cases; and the result of those cases of which the most important are Long v. The Bishop of Cape Town (1863) 1 Moo. P.C.(N.S.)411) and Merriman v. Williams (1882) L.R.7 A.C.484) seems to be this: If you join a voluntary association you will be bound by any rules which it had framed for its internal discipline and for the management of tis affairs."

20. Mr.T.R.Mani, learned senior counsel referred to the decision of another Bench of this Court, presided over by Sir Alfred Henry Lionel Leach, C.J., in the case of ROMAN CATHOLIC BISHOP OF TRICHINOPOLY v. AMIRTHASWAMI PILLAI (1944 (I) MLJ 157). The facts of that case are, a Roman Catholic Church was constructed in the place called, Varaganery and was dedicated for the religious worship in accordance with Roman Catholic rites. It was also found as fact that the church was built by the Roman Catholics of Vellala community and it was used by all Roman Catholics as being dedicated to the general public of Roman Catholics. A dispute arose when minority of the Vellala community obtained possession of the church and arranged for masses according to the rites of the Syrian church. Other Vellala community people filed a suit and when the matter came up before this Court on appeal, this Court held that the minority or even the majority of the Vellala Roman Catholics of Varaganeri would not be allowed to use the church for worship which is not in accordance with the Roman Catholic ritual and therefore, could not be allowed to introduce therein priests of another Church for the purpose of conducting worship. The Court held that the plaintiffs in the suit which was filed in the representative capacity are entitled to injunction restraining the defendants and their adherents from interfering with the Church and the conduct of the religious services held therein. The Court,

while granting injunction, also directed for the handing over of possession of the church to the representatives of Roman Catholics of Varaganeri village, subject to the spiritual authority of the Bishop of Trichinopoly.

21. Placing reliance on the above decision, T.R.Mani, learned senior counsel submitted that this Court has held that a particular community people residing in a particular place were held to be entitled to possession and the administration of the church and its properties and the same analogy should be extended to the plaintiffs who have filed the suit in the representative capacity of the Roman Catholic public of Vakkampatti village for declaration that the suit church and its properties belong to the entire Catholic public of Vakkampatti village. Learned senior counsel therefore submitted that in so far as secular administration of the church is concerned, it vests in the Roman Catholic public of Vakkampatti village.

22. We are unable to accept the submission of Mr.T.R. Mani, learned senior counsel for more than one reason. Firstly, in Amirthaswami Pillai's case (1944 (1) MLJ 157) this Court was considering the religious aspects of the matter and the question arose when the church was taken over by minority community people, and whether it was necessary to issue any direction for the handing over the possession of the church to the plaintiffs in the suit. Secondly, the facts of that case make it clear that the church was not consecrated, but only dedicated in accordance with the Roman Catholic rites and it was found as a matter of fact and on the basis of subsequent agreement between the community people and the Bishop that the Bishop was authorised only to depute a priest for the conduct of daily masses and on days of obligation and for the conduct of other religious services. In other words, on the basis of settlement of dispute, the church was dedicated for general public of Roman Catholic and maintained by a committee of Vellala Roman Catholics who had control over it for that purpose. In that factual situation, this Court held that since the church was maintained by a committee of Vellala Community people who had control over the church and its affairs, the possession should be handed over to the plaintiffs, the representatives of that community. Therefore, the decision in Amirthaswami Pillai's case (1944 (1) MLJ 1 57) hardly assists the case of the appellants herein.

23. As observed by the Supreme Court in Moran Mar Marthoma's case (1995 Supp. (4) SCC 286), admittedly there are no separate laws framed in respect of the church in question and the church is not governed by statutory laws. As the Roman Catholic Church in question is governed by the episcopal law, the jurisdiction of the Court would depend upon either the statute or the common law.

24. The above decisions make it clear that the Canon Law has made some distinction between the spiritual and temporal powers of the Papacy and the temporal powers of church vest in the Pope whose authority might be delegated to a Bishop to the extent of a particular diocese. Therefore we hold that once the church in question was constructed and consecrated by a Arch Bishop of Trichy Diocese, the church and its properties would vest in the Pope and the fourth respondent, Arch Bishop as a delegate of the Pope, is entitled to the spiritual and temporal powers over the church and its properties. As already observed, though the church was constructed with the funds mostly provided by the Roman Catholic public of Vakkampatti village, when the church was consecrated according to the Roman Catholic rites, the church and its properties would vest in the fourth respondent.

25. Can.1254 and 1257 make it clear that the catholic church has the inherent right, independently of any secular power to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives and all temporal goods would be regulated by the canons as well as by their own statutes. Sub-clause (2) of Can.1257 provides that unless it is otherwise expressly provided, temporal goods belonging to a private juridical person are regulated by its own statutes, not by these canons. Sub-clause (2) of can.1257 deals only with the temporal goods belonging to a private juridical person, and a body of Roman Catholic public in the village are not private juridical persons within the meaning of Canon Law.

26. It is, no doubt, true that it will be open to the church authorities and the Roman Catholic public of a particular village to regulate or to enter into an agreement with the villagers as to the mode of control over the church and its properties and in the absence of any agreement produced by the appellants herein, it must be held that the church and its properties vest only in the authority of the fourth respondent, viz., Arch Bishop of Trichy Diocese and the respondents 2 and 3 are the delegate of the Arch Bishop to exercise the spiritual and temporal powers over the church in question and its properties.

27. Mr.T.R.Mani, learned senior counsel submitted that the Canon Law cannot bind the Roman Catholic people of Vakkampatti village. Learned senior counsel referred to several dictionaries, namely, Pocket Law Lexicon, Mozely & Whiteley's Law Dictionary, Whartons Law Lexicon, K.J.Aiyer's Judicial Dictionary, Judicial Dictionary by Justice L. P.Singh & P.K.Majumdar, The Chambers Dictionary, Osborn' Concise Law Dictionary, Dictionary of Law by L.B.Curzon Barrister, The Code of Canon Law and A commentary of New Code of Canon Law, and on the basis of the above, he submitted that the Canon Law would only be binding the churches.

28. We have gone through the various dictionary meanings and some text books on Canon Law. The Supreme Court in Moran Mar Marthoma's case (1995 Supp. (4) SCC 286) held that the canons are principles of scriptural bases for the religious practice to be observed in a church. We have already found that the church is a voluntary association and if any person of the association desires to be a member or continues to be a member, he is bound by the rules framed for the association both in the matter of discipline and the internal management of the association. Further, some of the passages relied upon by Mr.T.R. Mani, learned senior counsel relate to the English established churches. It is found that a church of England is an established church because of its unique features about it, that it is subjected to the ordinary courts of law not only to matters temporal but even as to matters of doctrine and this is due to variety of historical reasons and therefore, it would not be profitable to apply the principles relating to the established churches to the Roman Catholic churches which are governed by their own rules. Therefore, on the basis of the law, particularly, the law governing the church in question, we hold that the church and its properties vest only in the fourth respondent herein and it is open to him to exercise his power through his delegates, namely, respondents 2 and 3. It is true that it would be open to the fourth respondent to authorise villagers to administer the secular affairs of the church, but the plaintiffs have not established that they were authorised by the fourth respondent to administer the secular affairs of the church and even if there were so authorised, they would exercise the power of

administration as authorised agents of the fourth defendant and not de hors the authorisation. Equally, it would have been open to the villagers to form a trust to retain the administrative control over the church and its properties at the time of consecration of church subject to the grant of consent by the fourth respondent for retaining such a control.

29. We are also conscious of the fact that when we have held that the church has vested with the fourth respondent, it does not mean the vesting of property in a person in the normal sense. We meant that so long as the authority of the fourth respondent continues over the catholic church and its properties, the church and its properties would vest in the fourth respondent.

30. It is, no doubt, true that it is open to the plaintiffs to show that notwithstanding the provisions of the Canon Law, the temporal affairs of the church are being governed by the custom of the Roman Catholic public of Vakkampatti village. If the custom is established, then, the Roman Catholic people of Vakkampatti village can claim right over the church and its properties by way of custom. To decide this question, it is necessary to refer to the averments made in the plaint wherein it is stated that the church is owned by the entire public and the church is open to worship for all and for the administration of the church and its properties donated by the Catholics, a committee of five members headed by Nattammai, the father of the first plaintiff was formed about 90 years ago. It is also the case of the plaintiffs that the Parish Priest has exercised no right over the functioning of the trust and the entire management of the trust and the properties vested in the five members of the committee of whom, three trustees were appointed by the public and their office is hereditary in nature. We have already observed that if the three members were appointed by the public and the term of their office is one year, it is not hereditary in nature as the concept of election is antithesis to the devolution of rights hereditarily. We have also observed that though the plaintiffs have claimed that there are five members and out of them, three were elected by the public, but, the plaint is completely silent as to the appointment or mode of devolution of trusteeship of other two trustees. It is also stated that the plaintiffs and the first defendant are the three trustees who have managed the church and its properties. According to the plaint, for conducting annual festival the committee collected money and after the festival was over, the accounts would be approved and the balance amount would be shared by the three trustees.

31. Mr.T.R.Mani, learned senior counsel referred to the relevant portions of the written statements as also the evidence of P.Ws.1 and 2 and D.Ws.1 to 4 and submitted that the first defendant in his evidence has admitted that the management of the church was throughout in the hands of the manager and he has also admitted that the key for the church was with him and he was keeping the accounts of the church. Learned senior counsel also referred to the evidence and submitted that the defendants 2 and 3 are not in the management of the church affairs and D.W.1 has admitted that the plaintiff was performing the functions as Kariasthar and he also admitted that he (D.W.1) handed over the management of the church to the defendants 2 to 4 only after the filing of the suit and only the religious part of the festival was done by the defendants 2 to 4 and the defendants 2 to 4 had not contributed any funds for the construction of the church and the priests were not directly

involved in the management or maintenance of the church and the first defendant's family is looking after the affairs and the improvement of the church. Learned senior counsel referred to the evidence of D.W.1 in extenso and submitted that he has admitted that there is no permanent priest in the church and sometimes, the festival was conducted without the priest. Learned senior counsel referred to the evidence of D.W.2 and submitted that D.W.2 has admitted that after the festival was over, the accounts would be shown to the public and the balance amount was credited to the accounts of the manager and he has also admitted that the first plaintiff has collected the money from the public. Learned senior counsel submitted that the evidence of D.W.2 shows that the Priest and the Bishop are not directly managing the church. He has also referred to the admission made by D.W.2 that the first plaintiff and the first defendant were in the management of the church for the past 30 to 40 years. He referred to the evidence of D.W.3, the Parish Priest where he has stated that the public used to bear the expenditure of the festival by way of donations and he has admitted that there is no written record to show that the church belongs to the defendants and he also admitted that the powers of the defendants 2 to 4 only relate to religious ceremonies. Learned senior counsel submitted that D.W.2 has stated that there is no written consent to show his power to manage the church. He relied upon the admission of D.W.2 that he is not staying in Vakkampatti village and he referred to Ex.B-15 and submitted that it cannot be stated that Vakkampatti village church comes within the ownership of the fourth defendant. He also referred to the evidence of D.W.4 where he has admitted that secretaries and managers were conducting certain festivals and the first defendant's father administered the church. He also referred to the evidence of D.w.4 and submitted that he has clearly admitted that the invitations for the festivals were printed only by the secretaries and managers and they would issue receipts for the annual collections. On the basis of the above pleadings and evidence, learned senior counsel submitted that the defendants have admitted that the administration of the church as far as secular matters are concerned is with the Roman Catholic public of Vakkampatti village and the administration is carried on through the managers and karisasthars.

32. Mr.Peppin Fernando, learned counsel for the first respondent, on the other hand, referred to the evidence of the first plaintiff where he has admitted that 90 years ago, his father appointed three trustees and submitted that the suit was instituted in the year 1990 and the evidence of P.W.1 was recorded on 7.4.1994 and if 90 years is calculated from that date, that would be 1904 in which year the father of the first plaintiff must be aged 7 years. He further referred to the evidence of P.W.1 wherein he has stated that his father C. Savarimuthu and the first defendant's father K.S.Maria Santhanam and the second plaintiff's father, A.Savarimuthu were the said trustees and submitted that the second plaintiff's father A.Savarimuthu was not even born on that date. He also referred to the evidence of P.W.1 where he has stated that after the performance of festival, the remaining amount would be divided into three parts and P.W.1 would take one share and submitted that the above evidence clearly shows that the plaintiffs have come forward with a false case, and according to him, it is impermissible for the trustees to take the surplus money collected for the church. He also referred to the evidence of P.W.1 wherein he has stated that either in the festival notices or in any other document he was not shown as a trustee and he also

admitted that trustee means manager and submitted that his evidence clearly discloses that the first plaintiff is not a trustee and his ancestors were not trustees at all. Learned counsel referred to the admission made by the first plaintiff that the Parish Priest is residing in the church and the first defendant is his own brother-in-law. He also referred to the evidence of P.W.1 where he has admitted that he was only a kariyasthar. Learned counsel submitted that the first plaintiff's name was not found in the exhibit, namely, the invitation printed for the church festival and there is no evidence to show his management and there is no written proof to show that there was a committee of five members and when the system of appointment of trustees was introduced. He referred to the admission made by the first plaintiff that he kept the accounts for 14 years and the second plaintiff also looked after the management and there are no accounts for the period when the management was with his father and Rev.Father is the representative of the Arch Bishop. He also referred to the evidence of P.W.2 that the second defendant is the Priest of Panchampatti who would attend the festival and collect his fees and the first plaintiff has not effected improvements in the church funds.

33. We have gone through the oral evidence as well as relevant documentary evidence. We find that the learned Single Judge has analysed the evidence in detail. We also find that the admission of the first plaintiff shows that he was not a trustee, nor was he a manager and the first defendant was the church manager. The first defendant was the Church manager and the evidence is that the first plaintiff assisted the Church manager. The plaintiffs are not able to establish that the secular administration of the church was handed over to the committee and there is absolutely no evidence to show that the secular administration of the church was handed over to the committee consisting of five trustees. Further, there is no proof regarding the mode of election or selection of trustees or the mode of administration by the said trustees. The first plaintiff himself admitted that he was a nattanmaidar and he was not conferred with any right to do the secular administration of the church. If the case of the plaintiffs that as nattanmaidar the first plaintiff is entitled to the management is accepted, then, it is not open to him to file the suit in a representative capacity for the Roman Catholic public of Vakkampatti village. The case of the plaintiffs is that the management of the church was with the committee consisting of five trustees is not established by any acceptable evidence. The so-called admissions of D.Ws.1 to 4 do not advance the case of the plaintiffs and they have not admitted anywhere that the secular administration of the church was with the committee of trustees and their admission is only to the effect that the first defendant was acting as a manager and he was collecting money for the performance of the festival and after the performance of the festival, the surplus amount would be handed over to the church. The above admission does not mean that they have admitted that the secular administration was with the committee of trustees. The documents, namely, Exs.A1 to 10 show that the invitations were printed in the name of Rev.Father and the first defendant was shown only as church manager and others were shown as nattanmaidars. Though in some of the invitations, the name of the Priest was not shown, the documents Exs.A1 to A-10 do not establish that the plaintiffs as the trustees took part in the conduct of the church festivals. On the other hand, it is clear from the evidence that the first plaintiff was recognised as

nattanmaidar. In view of the clear admission of P.W.1 that they are not trustees, not much reliance can be placed on Exs.A-1 to A-10.

34. It is also relevant to notice that the second plaintiff was not examined. The other witness who was examined is P.W.2 and his evidence does not inspire confidence for the acceptance of the Court. The plaintiffs have not taken any steps to examine any one of the villagers who are conversant with the affairs and management of the church to establish the case of the plaintiff that the secular administration of the church was with the committee of five.

35. We have gone through the evidence of the first plaintiff, who was examined as P.W.1. As already observed by us, he has not proved that there was a committee of management headed by the managing trustee from the public and the administration and management of the church and its properties were done by five members of the committee of trustees and the trustees were appointed by the public and the office of the trustee was hereditary in nature. As a matter of fact, his evidence shows that he was not even shown as a trustee in the pamphlets printed in connection with the church festivals and he was shown only as a kariasthar.

36. Mr.T.R.Mani, learned senior counsel relied upon the following statement made by D.W.1, 'with the consent of the village public and under the orders of the Bishop, my grandfather was in the management of the church as manager'. The statement, in our opinion, does not prove the case of the plaintiffs that there was a committee of management. The statement of D.W.1 means that the first defendant's grandfather was appointed as a Church manager under orders of the Bishop. The statement does not mean that the villagers have appointed the grandfather of the first defendant as manager. The other statement made in the deposition of D.W.1, on which heavy reliance was placed by the learned senior counsel, is 'as the public could not unite themselves and perform the management of this church, the managers were appointed 90 years ago, but they have been in the office in the capacity as managers ancestrally'. This statement also does not show that the public have appointed the managers, and the statement has to be read along with earlier statement of D.W.1 where he has stated that the managers were appointed under orders of the Bishop. Though D.W.1 has stated that the managers were holding the office ancestrally, it does not mean that the the villagers of Vakkampatti were in the management of the church and its properties through the managers and there is no such admission by the first defendant in his evidence.

37. Learned senior counsel also referred to the evidence of D.W.2 where he has stated that the entire management of the church was with the manager only and the church belonged to the village public. In our view, the above statement cannot be read in isolation and it has to be read along with the earlier statements where he has stated that the church was constructed by the public. He has not admitted that the entire administrative control over the church was with the public of Vakkampatti village. Further, the evidence of D.W.2 also shows that the management of the church was with the managers and the managers, as already observed by us, were appointed by the Bishop and not by the villagers. Further, the averments in the plaint as well as the evidence of P.W.1 are to the effect that the trustees would be collecting money from the public for the performance of festivals of the church and surplus amount would be divided among the trustees. If the above averment as well as the evidence that the surplus money would be divided among

the trustees is accepted, it would offend the provisions of the Trust Act and would also go against the purpose for which the contributions were made by the public. When moneys have been collected for a particular purpose and if there is any surplus after the expenditure, the surplus money should go either to the church or to the public and it is not possible to appropriate or misappropriate the money collected from the public by the so-called trustees. Further, the suit has been filed in a representative capacity and it is surprising to note that no one from the public in the village has come forward to support the case of the plaintiffs that the management of the church was with the committee of five trustees of whom three were nominated by the village public. We find that the plaintiffs have miserably failed to establish their case that the administration and management of the church was in the hands of the committee of trustees. There is no proof to support the case pleaded by the plaintiffs. Therefore we affirm the finding of the learned Single Judge on this aspect that the suit church and its properties do not belong to the entire catholic public of Vakkampatti village.

38. Exs.A-11 to A-15 and A-47, as noticed by the learned Single Judge, are account books maintained by the first plaintiff in connection with the affairs of the suit church from 1976 to 1991. The documents disclose that the first defendant was managing the affairs of the church only as Church manager and the documents do not establish that there was a committee of trustees which was managing the secular administration of the church. We affirm the finding of the learned Single Judge that the ecclesiastical jurisdiction vests with the defendants 2 to 4, and as far as the secular administration of the church, namely, collecting donations from public, conducting festivals, administration of the properties of the church, etc., is concerned, it shall be done only with the knowledge and permission of the Parish Priest. We also hold that the plaintiffs are not entitled to claim injunction against the defendants 2 to 4. We also hold that the plaintiffs are not entitled to the relief of removal of the first defendant from trusteeship. Equally, the plaintiffs are not entitled for a direction for rendition of accounts as the first defendant is not shown to be appointed by the village public as a trustee to manage the church and its properties. On the other hand, the evidence shows that he has been appointed as a Church manager by the defendants 2 and 3 and therefore, the plaintiffs are not entitled to seek direction for rendition of accounts from the first defendant, nor are they entitled to claim that the first defendant should deliver the management of the church and its properties to the plaintiffs.

39. As far as the second item in A-schedule properties is concerned, it consists of certain punja lands. This property, according to the plaint averments, was purchased in the name of one Kanagappan, grandfather of the first defendant and the family of the first defendant was enjoying the property throughout from the date of purchase. It is admitted that the patta in respect of second item of Aschedule stood in the name of the first defendant after the death of his predecessors. The plaintiffs claim that it is a property belonging to the church and the church is in management of the property, paying kist also out of the income of the church. It is further the case of the plaintiffs that the property is intended for due performance of service in the church and any alienation of the property would be invalid.

40. In the written statement it has been stated that the property described as item No.2 in A-schedule belonged to the family of the

first defendant and in the partition, it fell to the share of the first defendant and he sold the same to the fourth defendant by document dated 29.3.1993 (Ex.A-37). According to the first defendant, it is not the property purchased for the church and it is a private property of the first defendant's family. As far as the evidence is concerned, the first plaintiff has stated, in his evidence as P.W.1, that the patta for the land stood in the name of the first defendant and he gifted the land belonging to him in favour of the church. He has also admitted that the property was purchased by his grandfather for the church, but, there is no evidence of gift of the property by the first defendant's grandfather to the Church. The first defendant, in his evidence, has stated that the property did not belong to the church. He has stated that the property may be used for public purpose. D. W.2 has stated that the property in item No.2 of A-schedule belonged to the first defendant and the first defendant sold the property to the fourth defendant and the property belongs to the church.

41. Learned senior counsel relied upon the admission made by the D.W.2 and submitted that D.W.2 has admitted that the second item in Aschedule belongs to the church. We have seen Exs.A-49 and A-50. Ex.A-49 is dated 1.7.1889 and Ex.A-50 is dated 11.10.1900 and both the documents were executed in favour of Kanagappan, the grandfather of the first defendant. A reading of the documents does not show that the properties were purchased by the Church with the funds of the church or from the public money. The partition deed dated 3.5.1972 (Ex.B-5) in the family of the first defendant shows that the said property was allotted to the first defendant in the said partition. Apart from the partition deed, the first defendant has produced the documents in Exs.B-6 and B-7 to show that the patta stood in the name of the first defendant and he was paying the kist and he was in possession and enjoyment of the property. The first defendant has also produced evidence for payment of tax and payment of electricity charges. All the documents clearly show that the second item in A-schedule, namely, 27 cents is a property belonging to the family of the first defendant. The plaintiffs have not proved that the said property was a property of the church, and they have failed to prove that the property was purchased by the Church out of its own funds or by the public of Vakkampatti village.

42. Learned counsel for the respondents referred to certain decisions on the question of benami. We find that it is not the case of the plaintiffs that the property was purchased by the Church benami in the name of the grandfather of the first defendant. On the other hand, the way in which the first defendant's family dealt with the property shows that it was treated as a private property of the first defendant's family and in the absence of any evidence to show that the said property is a church property, we hold that the plaintiffs are not entitled for a declaration that the second item in A-schedule properties of an extent of 27 cents belongs to the church or the village public. Further, it is relevant to mention here that the first defendant sold the property in favour of the fourth defendant by document dated 29.3.1993 (Ex.A-37).

43. The suit was instituted in a representative capacity and at the time when the plaintiffs filed the suit, the plaintiffs did not seek

any relief against the fourth defendant. Subsequently, the plaintiffs filed an application seeking leave to sue against the fourth defendant and that application was dismissed. Therefore, it is not open to the plaintiffs to question the deed of sale executed by the first defendant in favour of the fourth defendant, as the sale has become final and the leave to sue against the 4th defendant was rejected and the fourth defendant was exonerated. Even on this ground also, the plaintiffs are not entitled to claim any relief in respect of 2nd item in A-schedule properties in the suit instituted in a representative capacity. In the view we have taken, it is not necessary to discuss the various decisions relied upon by the learned counsel for the respondents on the topic, benami. Accordingly, we affirm the finding of the learned Single Judge that the plaintiffs have failed to establish that the second item in A-schedule properties was purchased by the Church from out of the church funds or by the public and therefore the claim of the plaintiffs that the said property belongs to the church is not accepted and is rejected.
44. As far as B-schedule properties are concerned, not much argument has been advanced before us. It is seen from the evidence of D.Ws.2 and 3 that the descriptions given in the plaint for Bschedule properties are not correct. Further, for the performance of the ceremonies and the conduct of holy masses in the church, the vessels, ornaments and clothes would be necessary and it is not established that they belong to the public of Vakkampatti village. Therefore the claim of the plaintiffs that the first defendant is in possession of Bschedule properties and he has to render accounts for the same is rejected.

45. The plaintiffs also claimed that the first defendant should be directed to pay a sum of Rs.40,000/- to the first plaintiff from and out of the income of the suit church as the sum was spent by the first plaintiff for effecting repairs, renovation and additional construction in the church. This prayer is rejected as in a suit instituted in a representative capacity, it is impermissible for the first plaintiff to vindicate his individual claim that the sum of Rs.40,000 /- should be paid by the first defendant from and out of the church income. Further, there is absolutely no evidence to show that the first plaintiff has carried out the repairs, renovation and additional construction in the Church. He is not able even to say the year in which the amount was spent or when the construction was done. The plaintiff has not examined the contractor, nor even a coolie in support of his case that he had made some additional construction in the Church. In other words, there is no evidence for the expenditure incurred by the first plaintiff for the construction and the entries in the account books produced by the plaintiffs are also not reliable. There is also no evidence to show that the Priest or the first defendant permitted the first plaintiff to do the repair and other works in the Church with a promise to reimburse the same. Further, there is no evidence to show that the first plaintiff has spent money and hence, the individual claim of the first plaintiff against the first defendant for payment of Rs.40,000/- from and out of the church income is rejected.

46. We have already held that in the petition filed to permit the plaintiffs to file the suit in a representative capacity, the fourth defendant was exonerated and therefore the plaintiffs are not entitled to

claim any relief against the fourth defendant in the suit as the application filed seeking leave to sue against the fourth defendant was dismissed.
47. The respondents 1 to 4 have preferred a cross objection.
Mr. Peppin Fernando, learned counsel for the respondents did not press the cross objection preferred. Therefore, the cross objection fails and is dismissed.

48. Accordingly, we hold that the learned Single Judge was correct in holding that the plaintiffs are not entitled to the reliefs as prayed for in the suit and the learned Single Judge was also correct in dismissing the suit. Consequently, the Letters Patent Appeal fails and the same is dismissed. The Cross Objection is also dismissed. C. M.P.No.1434 of 2003 is ordered. C.M.P.Nos.10403 and 11741 of 1998 are closed. In the circumstances, there will be no order as to costs.

Index: Yes
Website: Yes

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Document marked in this appeal:

For respondents/defendants:

Ex.B-16 ... Copy of Order of Bishop of Trichirapalli
(with English version)

To

1. The Additional Subordinate Judge,
Dindigul.

2. The Section Officer, V.R.Section,
High Court, Madras.